

THE STATE SUCCESSION

MANANK PANCHMTIA

Student, Dr. Babasaheb Ambedkar College of Law, Rashtrasant Tukadoji

Maharaj Nagpur University, Maharashtra, India

ABSTRACT

The State Succession is a process where one state takes over another state, either partially or completely. The term was first used by Jeremy Bentham. There is a treaty called the Vienna Convention, which was adopted on 22nd April 1963 by the United Nations Conference on Consular Relations held at the Neue Hofburg in Vienna, Austria, from 4th March to 22nd April 1963 and became open for signatures in 1978 and entered into force from 6th November 1996 which basically lays down guidelines for diplomatic relations between various states in the world. The State Succession was a way to show how powerful a state was, the parent state took over the predecessor state and exploited the state relentlessly for their personal benefits. Jurists have authored many theories on state succession namely socialistic, option, populace, and burden with profit theories are a few among them. When a state takes over another state they have responsibilities and there are peace agreements between the parent and extinct state at the time of acquiring and leaving the extinct/predecessor state.

KEYWORDS: Vienna Convention & State Succession

Received: Aug 05, 2018; **Accepted:** Aug 26, 2018; **Published:** Sep 20, 2018; **Paper Id.:** IJPSLIROCT20182

INTRODUCTION

The State Succession

In Roman law, when a person dies, his rights and duties were succeeded by his successors. Grotius Hugo, also called the father of International law, applied this principle in the same. But it was Bentham, who first mentioned International Law. International law was also called the public international law or the law of nations, the body of legal rules, norms, and standards that apply between sovereign states and other entities that are legally recognized as international actors. The term was coined by the English philosopher Jeremy Bentham. When one state, i. e. parent or successor state, takes over another state, i. e. predecessor or extinct state, the parent state takes complete control over the latter, that's when state succession takes place. Basically, when the ruling party changes to a party not of the state, we can say state succession has occurred. The State Succession is a transfer of sovereignty from one subject of International law to another.

According to Oppenheim, "A succession of International persons occurs when one or more international person takes the place of other international persons, in consequence of duties, rights and obligations are transferred in the latter condition."

The Vienna Convention on Succession of States in respect of Treaties is an international treaty opened for signatures in 1978 to set rules on succession of states. It was adopted partly in response to the "profound transformation of the international community brought about by the decolonization process". It entered into force on 6th November 1996, which was triggered by the succession of the Republic of Macedonia to the treaty giving it

the requisite 15 parties.

The treaty has proven to be controversial, largely because it distinguishes between "newly independent states" (a euphemism for former colonies) and "cases of separation of parts of a state" (a euphemism for all other new states).

According to Art. 1 (1) (a), 'Vienna Convention on Succession of States in Respect of State Property, Archives and Debts (States), State succession refers to 'the replacement of one State by another in the responsibility for the international relations of territory'.

The succession of states is one of the most complex, challenging and politicized fields of international law. Attempts by the International Law Commission (ILC) to codify it in the dying days of decolonization produced two treaties – the Vienna Conventions – neither of which has attracted broad participation or been holistically impactful on subsequent practice. As in the first wave of successions in decolonization (1950–1974), the second wave of desovietization (1990–1996) featured reactive solutions, which were sometimes overtly improvisational and, at other times, purported to apply norms whose authority, content and rationales were unsettled.

As occurred after decolonization, succession has largely dropped from the professional agenda since desovietization. While there has been no third wave, the sporadic pieces of 21st-century practice momentarily revived the hoary problems of the past, including South Sudan, Kosovo and the Crimea alongside Scotland, Catalonia, Moldova and Iraqi Kurdistan as potential cases. The field is also gaining prominence in investment arbitration, including succession to membership of the International Centre for the Settlement of Investment Disputes (ICSID) and various bilateral investment treaties.

THE REASON FOR THE STATE SUCCESSION

Whether it be England controlling Asian States like India and African States US Controlling Japan their main motive was expansion and exploitation. The conquests of these States were a way of show boating the influence and power they had in the world. Few other reasons for State Successions were –

- War
- Annexation
- Cession
- Merger
- Dismemberment
- Decolonization

TYPES OF STATE SUCCESSION

A state succession can be characterized as either being **universal** or **partial**. A universal state succession occurs when one state is completely extinguished, and its sovereignty is replaced by that of one or more successor states. A partial state succession occurs when the state continues to exist after it had lost control of a part of its territory.

An example of a partial state succession is the case of the split of Bangladesh from Pakistan, there was no challenge to Pakistan's claim to continue to exist and to retain its membership of the United Nations: it was a continuator

and not a successor. Bangladesh eventually was known as a new state: it was a successor and had to apply for UN membership. The Great Britain takes over India is an example of Partial State Succession.

An example of a universal state succession is the dissolution of Czechoslovakia. Neither part claimed any continuity: both the Czech Republic and Slovakia were new successor states.

THEORIES OF THE STATE SUCCESSION

The effects of the change of sovereignty on the rights and obligations of the predecessor and successor state have been explained by various jurists. The juridical explanations provided by various jurists in term of various theories are highly contradictory, which has often resulted in the prevailing confusion of the state practices in the question of state succession.

Universal Theory

- **Theory** - This theory says that all the rights and obligations of the predecessor state passes to the successor state on the change of the sovereignty.
- **Justification** - This theory, in fact, is ' based on the two premises; first, the state and its sovereign receive their power from God or nature, so that any change in the government does not affect the omnipotent origins of the state, second, the State itself, is considered the permanent and immortal and thus transmissible to the successor states. Because of these premises, the theory of universal succession becomes a theory of universal continuity since the immortality of the state combined with the everlasting power of God creates a constantly recurring transfer of unchanging rights and obligations from agent to agent.

The Popular Continuity Theory

- **Theory** - According to this theory, a state has two personalities of its own; one is social and the other is political. Territory and the populace who occupy such territory, are the basis of social personality of the state because the territory is inseparably connected with each other and form a permanent social identity. Whenever state succession takes place only the political identity of a state is affected while the social personality remains intact.
- **Justification** - On the analogy of the two different personalities of the state, this theory also makes a distinction between social and political commitments of the state, i. e. rights and obligations are personal to the sovereign and rights and obligations of the sovereign in relation to public or territory. This theory considers the state succession to be a fiction or metaphor affecting "only the political commitments of the state. The social personality of the state to which rights and obligations of the patrimonial character which are attached to the society, continues even after the change of sovereignty which passes to successor state, while the rights and obligations of the political characters lapse with the extinction of the state. Thus, if an obligation is purely personal to the king and no nexus can be established between the state's social commitment and the obligation, then the obligation will lapse after the change of sovereignty.

The Organic Substitution Theory

- **Theory and its Justification** - According to this theory, in the event of the state succession the factual element of the people and the territory are integrated in a new organic bond, the change takes place only in the juridical element of the organization. As a result, the state loses its identity, but the organic forces, which previously governed it remain unaffected. The successor state gets a new personality and absorbs all the surviving factual elements of predecessor state. Thus, the successor state substitutes itself in the place of extinguished personality of predecessor state, and thereby it takes over all the rights and obligations of the letter.

The Self-Abnegation Theory

- **Theory** - According to Jelinek, the successor state, in the exercise of its own will or by the act of 'auto limitation' agrees to observe the rules--of international law, and performs the obligations towards other states created under them. Thus, Jelinek posited a duty of self-abnegation, a moral duty, on the successor state to absorb rights and obligation of predecessor state upon change of sovereignty; in the interest of stability in the world order it is about to join.
- **Justification** - Although, this theory considers that the performance of the international obligation, is merely 'moral duty' of the successor state, but at the same time it gives the right to the other states, to insist upon the successor state to perform the existing obligation. If the successor state refuses to accept, the other states may even withhold its recognition or make the recognition conditional upon the acceptance of predecessor's commitment towards them.

RESPONSIBILITIES AFTER THE STATE SUCCESSION

Political Rights and Duties

The successor has the entire say whether the State succeeded gets to retain its existing ideology or to completely wipe it out and introduce the Parent State's ideology. The Parent State can split the predecessor state and enforce their ideas in either one. After the Second World War Korea was Split into North and South Korea, where Soviet Union implemented Communism in the North and The US implemented democracy in the South.

Local Rights and Duties

A genuine succession takes place regarding this. The parent state is responsible to take care of the rivers, railways, roads, land, overseas assets, participation in treaties, membership in organizations, debts. A special case arises, however, when the predecessor state was signatory to a human rights treaty, since it would be desirable to hold the successor state accountable to the terms of that treaty, regardless of the successor or state's desires. Daniel Patrick O'Connell wrote, "Practice is tending towards a de facto succession to at least those conventions which have a humanitarian aim".

Fiscal (Public) Debts

When Great Britain took over African States, they made a peace agreement saying they will not be responsible for the fiscal debts of the states.

An American, Robert R. Brown went to South Africa in 1894. He bought land there for gold mining business. Robert then filed for 1200 prospecting licenses at 8:30 am in the morning of 19th July 1895. The formal application was declined by the clerk and was postponed until 10am on the same day. Shortly, after the clerk received a telegram from the

government under which Witfontein had been thrown open for public digging. Brown protested again and made a tender of the money for the licenses, which was refused. Pursuant to his instructions, 1,200 mining claims were in fact pegged, and Brown subsequently asserted title to them claiming the withdrawal of the original proclamation was invalid and that the Clerk had no right to refuse issuance of the licenses.

The allowance for mining happened in 1894 but the subsequent withdrawal came in 1895, but by then Brown had already invested in Eastern South Africa in the gold mining business.

By the time Brown filed a suit for compensation in the High Court of South Africa, England took over and in the peace agreement Great Britain was clear it will not be responsible for the debts. The matter then went to the Arbitration Tribunal. This was the first case of unliquidated damages. In the end, the court held that 372,000 GBP had to be paid to Brown.

Contractual Agreements

Whenever one State succeeds another, there is always a contract that is binding upon the two states, called a peace agreement. In that contract, the parent state makes it clear to the predecessor state that it will not be responsible for the debts of the latter. This is applicable only for civil liabilities.

If the predecessor state had entered into contracts with other states, the parent state will have absolutely no obligation to carry out the same.

Nationality

Oppenheim said Nationality is a continuous process between the state and its citizens. It is passed on to the next generations. It defines a quality of an individual. It gives a status in the society. Fenwick said it is a Bond. When a person is a member of a state he gets a claim of protection from the state and in return there are some obligations that he must do for the state in the form of law. This is the most accepted, appropriate and modern definition of nationality where there's a two-sided obligation.

When there is a universal takeover there is a change in nationality of the citizens of the predecessor state, but when there is partial takeover the nationality of the citizens does not change.

When there were Portuguese people in Goa they had an option to stay back or to return to their own country. Some of them stayed back while some of them returned to Portugal.

Property in a Foreign State

According to the Vienna Convention on State Property, Article. 11 says that, Property of the predecessor state will be acquired by the Parent state without any compensation.

Succession in Respect of Treaties

Clean State Theory

When a state gets independence from the state that had taken over, it is up to them whether to carry forward the treaties they had made with the previous state and to become completely free or to start afresh dissolving any kind of treaties that the parent state had made.

Moving Treaty Frontiers

Here the parent state is willing to leave the occupied state on the condition that they have to follow the treaties signed by them when they were ruling the former. There are Do's and Don'ts that need to be followed. Being free from their rule and continuing the treaties comes in a package.

CONCLUSIONS

The Successor State enjoys all the rights over the Predecessor State. It also discharges all duties. It can either be universal or partial. Succession of states is a theory and practice in the international relations regarding the successor states. A successor state is a sovereign state over a territory and populace that was previously under the sovereignty of another state. The theory has its root in the 19th-century diplomacy. A successor state often acquires a new international legal personality, which is distinct from a continuing state, also known as a continuator, which, despite the change to its borders retains the same legal personality and possess all its existing rights and obligations.

After the Successor State captures the Predecessor State there are treaties or peace agreements formed between the two. It could be unilateral, bilateral or multilateral. Bilateral and multilateral treaties necessarily give rise to different considerations. There are real treaties and personal treaties. Real treaties affect the territory, such as boundary agreements or the grant of transit rights, which can continue irrespective of the personality of the state. The new state must take over the country in the condition in which it finds it, as the parent state cannot give more than it possesses. Such treaties can be described as "treaties creating purely local obligations".

All in all, there is a need for codification of the State Succession.

REFERENCES

1. *Wikipedia*
2. https://www.lawnotes.in/State_Succession
3. *Shodhganga*